

SEARCH AND SEIZURE — Particularity requirement — description of property, in general — Revised 12/2009

The Fourth Amendment requires every search warrant to "particularly" describe "the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. But the requirement of particularity "is not so rigid as to mandate that every item seized by the police be specifically listed in the warrant before seizure is authorized." *State v. Ray*, 185 Ariz. 89, 92-93, 912 P.2d 1318, 1321-22 (App. 1995); *State v. Terrell*, 156 Ariz. 499, 501, 753 P.2d 189, 191 (App. 1988).

When deciding whether a warrant is too general, the courts must consider the nature of the property sought to be recovered. In *Ray*, the defendant operated an automobile "chop shop" and had four auto salvage yards with extensive inventory. Officers obtained warrants to search for three categories of property: specific property actually listed in the affidavits; any major vehicle part bearing a missing or altered vehicle information number (VIN) plate; and any major vehicle part with a VIN attached. Teams of officers examined the hundreds of thousands of vehicle parts on the property; based on that examination, officers prepared about a thousand information cards listing VINs; then the VINs listed on the information cards were checked by computer. Only 163 items were actually seized as contraband. On appeal, the defendant argued that the warrants were too general and therefore invalid. The Court of Appeals upheld the search. The Court found that the nature of the "chop shop" business, which involved potentially millions of individual car parts, made it impossible for the police to describe precisely what stolen property they expected to find during the search. The search warrants issued were supported by a 33-page affidavit providing probable cause to

believe that specifically listed stolen parts from named vehicles were on the defendant's property and that the defendant was the principal in a continuing business of trafficking in stolen property. The search was properly limited because the officers were directed not to examine several categories of automobile parts that do not have VINs, such as bumpers, rear axles, and suspensions. 195 Ariz. at 92, 912 P.2d at 1321.

A defective description of the property to be seized may be saved by an adequate description in the affidavit establishing probable cause to issue the warrant. *State v. Moorman*, 154 Ariz. 578, 583, 744 P.2d 679, 684 (1987). "For an affidavit to save a defective warrant, it must appear at a minimum that the executing officer had the affidavit with him and referred to it." *Id.* In *Moorman*, due to an error by the officer who filled out the forms, the search warrant itself contained no description of the items to be seized. However, the affidavit supporting the search warrant contained a complete description of the items to be seized. The magistrate signed both the warrant and the affidavit, and the warrant itself referred to the items to be searches as being "more fully described in the affidavit." The Arizona Supreme Court upheld the validity of the search:

Under these facts, where the warrant referred to the affidavit, the two documents were kept together during the search, and the investigating officer saw them both, we believe that the description in the affidavit saved the defective warrant from being an exploratory warrant. This type of technical mistake does not require suppression.

Id.